



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]
EAC 99 056 53383

Office: Vermont Service Center

Date: JAN 21 2000

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[REDACTED]

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prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

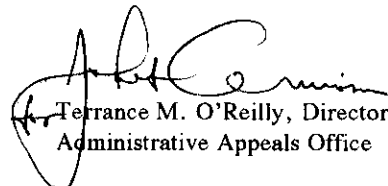
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded to the director for further action.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner has neither been arrested nor committed any acts which would reflect negatively on his good moral character for the three-year statutory period. Counsel states that the petitioner has sole custody of his children and conducts himself as a responsible and caring individual.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

While the petition, Form I-360, shows that the petitioner arrived in the United States in 1997, the petition further shows that the petitioner resided with his U.S. citizen spouse since July 1993. The petitioner's current immigration status or how he entered the United States was not shown. The petitioner married his United States citizen spouse on March 9, 1996 at Los Angeles, California. On December 8, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the three-year period immediately preceding the filing of the self petition.

The director reviewed the evidence furnished by the petitioner to establish good moral character. He noted that the petitioner was arrested and charged on June 30, 1980 with drunk driving on the highway; arrested on July 16, 1980 and subsequently convicted of drunk driving on the highway; and arrested on April 6, 1991 and subsequently convicted of driving under the influence of alcohol. The director determined that based on these repeated arrests for driving under the influence of alcohol, a person cannot be found to be of good moral character if he or she is a habitual drunkard pursuant to section 101(f) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(f).

On appeal, counsel argues that the petitioner's last arrest and conviction for driving under the influence occurred more than seven

years prior to the filing of the self-petition. Citing Matter of H-, 6 I&N Dec. 614, 615 (BIA 1955), counsel further argues that the three unfortunate arrests for driving under the influence do not support the Service's determination that the petitioner is a "habitual drunkard" as reflected in section 101(f) of the Act because the three arrests do not rise to the level of such frequency as to amount to a fixed habit and a tendency to become intoxicated as often as the temptation is presented.

8 C.F.R. 204.2(c)(1)(vii) provides, in part, that:

A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act.... A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be establish, is, or was--

(1) a habitual drunkard....

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character during the three-year period immediately preceding the filing of the petition. The self-petition, in this case, was filed on December 8, 1998. The record

reflects that the applicant's last conviction was on April 6, 1991, more than eight years prior to the filing of the self-petition.

It is, therefore, concluded that the petitioner has established that he is a person of good moral character. The petitioner has overcome the director's sole ground for denial pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

Nonetheless, this matter will be remanded in order that the director may review the record of proceeding and determine whether the remaining criteria listed in 8 C.F.R. 204.2(c)(1) are satisfied. The director shall enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.